IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 674 OF 2006

Smt. Abhubai Manik Avchit .... Petitioner

versus

Smt. Panna Shankar Chauhan ... Respondent.

Shri H.S. Venugaokar for the petitioner
Shri Jammu fouzi with H.w.Kode for the respondent.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 15, 2006.

P.C:

1. Heard both the sides. Perused the record.

2. This petition is preferred against the order passed by IV Addl.District Judge, Thane rejecting the application for condonation of delay in preferring the appeal challenging the judgment and decree passed in RCS No. 781/03 by C.J.J.D. Bhiwandi dated 9-7-2004. The delay thereof is 224 days in preferring the appeal and hence the present application came to be filed.

3. The suit was decided ex-parte against the present petitioner on the ground that he was rendered defaulter in payment of rent inspite of the demand notice served upon her.

4. The applicant sought to make out the case on two grounds for getting the delay condoned. The first ground is that she had appointed advocate Damodar to appear on her bahalf to contest the matter, but on enquiry found that the said advocate failed to file his appearance on her behalf and the matter decided exparte. The second ground that the applicant came to know of the ex-parte decree against her only on 1-1-2005 through her neighbour. Thereafter she had initially filed M.A.No. 14/2005 for getting the exparte order set aside. As she failed to obtain any stay to the ex-parte order in the Misc. Application, she filed appeal and in that appeal, delay condonation application came to be filed.

5. The learned appellate court adjudicated the application on merits, holding that there was no sufficient ground to condone the delay and that application was rejected and hence this present petition.

6. At the outset it may be noted that the main contention on behalf of the petitioner is that because of the negligence of the advocate engaged by her the ex-parte order came to be passed. However, it so appears that the said advocate Damodar was examined by the other side as a witness and he has stated in the

witness box on oath that he was practicing advocate for 22 years and he was not engaged by the present petitioner in any matter including the present matter. Infact his evidence shows that he was not knowing the petitioner at all. In my considered view, this aspect proves to be fatal to the petition especially when it shows that the plea for condonation of delay not only unproved but infact it shows that it has been disproved and the petitioner is falsified in that regard when advocate Damodar had denied any concern whatsoever with the petitioner or with her said matter which was pending in the court. In my view there is absolutely no reason for advocate Damodar to state anything false against the petitioner and therefore the lower appellate court has rightly relied upon such evidence to show that there was no sufficient ground to condone the delay.

7. Be that as it may, the appreciation and the finding of the lower appellate court appears to be just legal and proper while rejecting the application for condonation of delay, which needs no interference.

8. In the result, the petition is dismissed with no order as to costs. Interim relief if any stands vacated.

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